

MEMO TO WISCONSIN DNR BOARD REGARDING PROPOSED SAUK PRAIRIE RECREATION AREA MASTER PLAN, NRTTC AUTHORITY AND DNR DEPARTMENTAL DUTIES

9 December 2016
BY WILLIAM HAUDA

I am the bicycling representative appointed by the governor to the Nonmotorized Recreation and Transportation Trails Council. I have been authorized by NRTCC to express our concerns that DNR has not followed the requirements of state law in developing a proposed master plan for the Sauk Prairie Recreation Area.

BACKGROUND

2009 Wisconsin Act 394 the Legislature enacted and the Governor signed into state law the statutes that created our Council and prescribed the method of composition, mission and the duties the Council and the Departments of Natural Resources and Transportation were to follow.

The state statutes that resulted are as follows:

15.347 (20) NONMOTORIZED RECREATION AND TRANSPORTATION TRAILS COUNCIL.

(a) There is created in the department of natural resources a nonmotorized recreation and transportation trails council.

(b) The governor shall appoint members of the council to serve at the pleasure of the governor. In appointing the members of the council, the governor shall seek geographic diversity in the membership. The governor shall appoint members who personally undertake nonmotorized trail activities or who participate in organizations that own or maintain nonmotorized trails or that promote nonmotorized trail activities. The governor shall appoint members who represent as many as possible of the following groups, or who represent persons who engage in other nonmotorized trail activities or who have other interests related to nonmotorized trail uses identified by the governor:

1. Persons who engage in activities on water trails.
2. Pedestrians.
3. Persons who engage in horseback riding and buggy driving.
4. Persons who engage in long-distance hiking.
5. Persons who engage in nature-based activities, such as bird watching, nature study, hunting, and fishing.
6. Persons who engage in snow sports.
7. Persons who engage in bicycling of all forms, including trail riding, mountain biking, commuting, and long-distance bicycling.
8. Persons who represent local forests or parks.
9. Persons with physical disabilities who engage in nonmotorized trail activities.

10. Persons who are interested in tourism promotion.

11. Persons who represent tribal lands.

(c) If any member of the council is unable to attend a meeting of the council, the secretary of natural resources may appoint an alternate for that meeting to ensure that the full range of nonmotorized trails interests and activities is represented at the meeting.

23.177 Nonmotorized recreation and transportation trails council.

(1) DUTIES OF COUNCIL. The nonmotorized recreation and transportation trails council shall carry out studies and make recommendations to the legislature, governor, department of natural resources, and department of transportation on all matters related to nonmotorized recreation and transportation trails, including matters relating to nonmotorized trail activities or interests specified in s. 15.347 (20) (b) 1. to 11.

(2) DUTIES OF DEPARTMENTS OF NATURAL RESOURCES AND TRANSPORTATION.

(a) The department of natural resources and department of transportation shall seek the advice of, and consult with, the council regarding the planning, acquisition, development, maintenance, and management of nonmotorized recreation and transportation trails.

(b) The department shall establish and maintain a Web site where a person may locate information about the council, including all meeting notices and agendas.

(c) The department shall prepare written minutes of each meeting of the council and shall make them available on the Web site established under par. (b).

THE ISSUE

This memo deals specifically with Sec. 23.177 (2) (a), which is highlighted for emphasis. There are basically two words that define priority in the statutes. In enacting law, the Legislature can use “may,” which indicates discretion. The word “shall” is a mandate, no discretion, and this is what the Legislature and Governor declared. Put another way, DNR and DOT are required by law to involve our council in all of the things embodied in Sec. 23.177 (2) (a).

DNR has pending a plan for the Sauk Prairie Recreation Area. NRTTC was never consulted nor involved in development of that plan, which involves a controversial introduction of on-off motorcycle use of the state’s bicycle and equestrian trails. It is our view that is a use that would be destructive of all other users of the area.

It is clear that we as a Council, and the people we represent, DNR and DOT have had the rules of our interaction defined by the Legislature in state law. It is also clear that this has not been done. We have not been consulted, as required by law.

Despite efforts by our council to get information, we have been ignored by DNR staff.

The Sauk Prairie plan was developed in secrecy. We learned of it only after public announcement. Asked why we weren't informed while the process was ongoing staff told us "we didn't want to give you an advantage." Notwithstanding, the Legislature and Governor had declared our advantage was to be involved from the start, not just as some outside group reacting to what DNR had already done in private.

So we asked DNR legal affairs for a legal opinion. We got back a non-responsive answer, basically saying that because we had a DNR staffer assigned to us that was sufficient. The correspondence did not address the question of whether that staffer was ever informed of what was progressing in the planning stage.

We finally did get copies of an exchange of letters between the DNR planners and National Park Service in which NPS expressed important concerns about the motorcycle issue and insisted on more details and protections. But then we never got any information from our DNR staffer regarding what, if any, modifications were ever made to alleviate NPS concerns.

RECOMMENDATION

Our council desires that you take note of our unanimous action in opposing introduction of on-off road motorcycles to the state's trails. These motor vehicles are capable of 80 miles per hour and have no place in Sauk Prairie or other recreational areas. We urge you to consider the horrendous environmental damage that will likely result, and the adverse impact on all other users. DNR is short of staff and incapable of effectively enforcing any rules governing activities; they don't even have enough staff to routinely check trail passes.

Our Council wishes to ensure the mandate in state law is carried out, and that we become involved in matters involving state trails early on, as they are planned and developed, as was intended by the Legislature, not after the fact. In the case of the Sauk Prairie master plan, neither the Council nor our constituencies were ever consulted by DNR. This violates the statutes.

In view of pending litigation against DNR regarding the master plan, which will likely find an abuse of statutorily directed process, we urge the DNR board to direct the DNR staff to immediately comply with the statute and to place consideration of the Sauk Prairie master plan matter on hold until the courts render a decision.

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